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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,816

11/13/2003

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EXAMINER

CARDENAS NAVIA, JAIME F

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

06/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/712,816	Applicant(s) ROYALE ET AL.	
	Examiner Jaime Cardenas-Navia	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/27/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. This **NON-FINAL** office action is in response to applicant's submission filed on November 13, 2003. Claims 1-14 are pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on February 27, 2008 has been considered by the examiner.

Drawings

3. **The drawings are objected to** because the heading of the top box of Figure 1 is missing several letters, notably an "O" and two "G"s.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. **The disclosure is objected to** because of the following informalities: At the end of par. 26, there is a comma that should be removed.

Appropriate correction is required.

Claim Objections

6. **Claims 1, 2, 5, and 14 are objected to** because of the following informalities:

Regarding claim 1, in part a), "the community" should be changed to "a community", as there is no prior instance of a community. In part b), "a target market" should be changed to "target markets", as a plurality of target markets are later referenced.

Regarding claim 2, "target market is" should be changed to "target markets are" since there are a plurality of target markets.

Regarding claim 5, "the subject population" should be changed to "the institute's population" to make clear for which population information is being gathered.

Regarding claim 14, "include one" should be changed to "includes one".

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 1-3, 9, and 13 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 3, 9, and 13, "needs" is a relative term which renders the claim indefinite. It is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For purposes of examination, each instance of "needs" has been interpreted as "preferences".

Regarding claim 2, "a secondary characteristic" should be changed to "said secondary characteristic", as there is antecedent basis for the phrase.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. **Claims 1-14 are rejected** under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent (See *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978)) and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101.

Independent claims 1, 3, and 9 are processes that are not tied to another statutory class and are therefore directed to non-statutory subject matter. Examiner additionally notes that for process claims implemented on a computer to be considered statutory, the process must be tied to the computer in substance as well as form.

Additionally, the steps of defining, assessing, comparing, correlating, and reporting may be interpreted as no more than the manipulation of an abstract idea. The Supreme Court has specifically identified abstract ideas as a category of nonstatutory subject matter. Even so, the claimed invention may qualify as statutory subject matter if it provides a practical application, through either a physical transformation or by producing a useful, concrete, and tangible result. Applicant's claimed invention does not involve a physical transformation, so it must produce a useful, concrete, and tangible result. The claimed invention does not produce a concrete result

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because each of the steps involve significant human discretion, and thus even when applying the process to the same institution, the results of the process could vary greatly. See MPEP 2106 IV.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. **Claims 1-9, 12, and 14 are rejected** under 35 U.S.C. 102(b) as being anticipated by Halverson (US 2002/0077843 A1).

Regarding claim 1, Halverson teaches a method for assessing institutional needs (par. 2) comprising the steps of:

a) defining at least a primary and a secondary characteristic used for segmenting a community (par. 39, several examples of segmenting are given, such as primary segmenting based on preference for group or individual seating, and then secondary segmenting based on preference for music or sounds);

b) segmenting the community by said primary characteristic into target markets (par. 39);

c) for each target market unit:

1) assessing preferences of the population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences);

2) comparing the preferences to current services to identify each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience);

3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44).

Regarding claim 2, Halverson teaches wherein following step b), the target markets are further segmented by a secondary characteristic, wherein step c) is carried out within each of said further segmented target markets (par. 39, the target market is further segment based on preference for music or sounds, par. 39, lines 9-11, fig. 8-12, preferences are assessed , par. 39, lines 46-49, opportunities are identified and correlated to an available service, par. 43, 44).

Regarding claim 3, Halverson teaches a method for assessing institutional food-service preferences (par. 2) comprising the steps of:

a) defining a plurality of target market units (par. 39, several examples of segmenting are given, such as primary segmenting based on preference for group or individual seating, and then secondary segmenting based on preference for music or sounds);

b) defining a plurality of day-parts (fig. 12);

c) for each target market unit at each day-part:

1) assessing the preferences of the population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences);

2) comparing the preferences to current services to identify each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not being met and interpreted as an opportunity by management to increase value of the dining experience);

3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44).

Regarding claim 4, Halverson teaches wherein each of said plurality of day-parts is based on traditional meal times (fig. 12).

Regarding claim 5, Halverson teaches wherein each of said plurality of day-parts is modified in accordance with information regarding eating times of the institute's population (fig. 12).

Regarding claim 6, Halverson teaches wherein each target market unit is defined by grouping geographically proximate areas with similar populations and uses into a single unit (par. 58-61, the example is given where for a state fair, geographically proximate areas with similar populations and uses are grouped into a single unit, e.g. nearby people who like arts and crafts, nearby people who like large animal exhibits, etc.).

Regarding claim 7, Halverson teaches wherein at least one target market unit is further divided into at least one sub-unit based upon a distinct use or population within a target market unit (par. 39, the target market of people who have seating preferences is further segmented into populations with a preferences for music or sounds).

Regarding claim 8, Halverson teaches after the correlation step, the step of producing a report indicating the correlated available services as recommended services (fig. 6, par. 42, claim 1, reports provide correlated available services, which are acted on by the manager, par. 58 is an example of a report with correlated available services).

Regarding claim 9, Halverson teaches a method for assessing institutional food service preferences on a campus (par. 2) comprising the steps of:

a) gathering information concerning at least one of :

- 1) campus geography;
- 2) campus architecture;
- 3) population (fig. 12, contains location, time, purpose, and schedule information of individuals);
- 4) food service preferences (fig. 8-11;
- 5) existing services (par. 43, for example, available meal locations, capabilities and equipment of the facilities (sound generation), fig. 8-11, surveys provide satisfaction);

b) defining a plurality of target market units, and optionally sub-units, based upon information gathered (par. 39, several examples of segmenting into target market units are taught, such as forming units based on preference for group or individual seating, and then forming sub-units based on preference for music or sounds);

c) defining a plurality of day-parts based on traditional meal-times, optionally modified by information gathered (fig. 12); and

d) for each target market unit at each day-part:

- 1) assessing the preferences of the population therein (par. 39, lines 9-11, fig. 8-12 are surveys and preferences),
- 2) identifying each preference not met by current services as an opportunity (par. 39, lines 21-46, as an example, seating preferences are identified as a preference not

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being met and interpreted as an opportunity by management to increase value of the dining experience),

3) correlating each opportunity to an available service (par. 39, lines 21-46, seating preference was correlated to the service of offering individual or group seating, par. 43, 44), and

4) reporting each correlated available service as a recommended service (fig. 6, par. 42, claim 1, reports provide correlated available services, which are acted on by the manager, par. 58 is an example of a report with correlated available services).

Regarding claim 12, Halverson teaches wherein said information on population includes one or more of: location, time, purpose, and schedules of individuals (fig. 12, contains location, time, purpose, and schedule information of individuals).

Regarding claim 14, Halverson teaches wherein said information on existing services includes one or more of: location of services, on-campus services, off-campus services, satisfaction, and type of services (par. 43, for example, available meal locations, capabilities and equipment of the facilities (sound generation), fig. 8-11, surveys provide satisfaction).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 10, 11, and 13 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Halverson (US 2002/0077843 A1) as applied to claim 9, in view of Snyder et al. (US 2008/0057482 A1).

Regarding claim 10, Halverson does not expressly teach wherein said information on campus geography includes one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel.

Snyder teaches wherein said information on campus geography includes one or more of: location of buildings, roads, landscape features, traffic patterns, travel time between buildings, and obstacles or impediments to travel (par. 16, information on location of buildings and travel time between buildings is collected).

The inventions of Halverson and Snyder pertain to collecting demographic information to optimize the services of an institution. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Snyder does not teach away from or contradict Halverson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by increased efficiency in the services of the institution provided by taking into account as much information about the community as possible, as recognized by Halverson (par. 43, lines 59-62).

Regarding claim 11, Halverson does not expressly teach wherein said information on campus architecture includes one or more of: use, location, attendance rates, and schedule of each building.

Snyder teaches wherein said information on campus architecture includes one or more of: use, location, attendance rates, and schedule of each building (par. 16, information on preferences and resource-based use of buildings is collected, par. 170, location of buildings is gathered to calculate distance between buildings, par. 15, collection of attendance information, par. 16, schedule of classes in building is collected and optimized).

The inventions of Halverson and Snyder pertain to collecting demographic information to optimize the services of an institution. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Snyder does not teach away from or contradict Halverson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by increased efficiency in the services of the institution provided by taking into account as much information about the community as possible, as recognized by Halverson (par. 43, lines 59-62).

Regarding claim 13, Halverson teaches wherein said information on food service needs and desires includes one or more of: dining style, meal-type, grocery, food types, desired services, desired eating and snacking times, and food preferences (fig. 8-12).

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

D'Alessandro (US 6,556,974 B1) teaches collecting information for assessing an organization's performance.

Dean et al. (US 2004/0162752 A1) teaches collecting data and developing services to better suit the requirements provided by the analysis.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Thur, 9:30AM - 8:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J. C./
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623